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Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Ashcroft:

I am writing you today to voice my opinion in regards to the Microsoft settlement issue. I feel that this debate has gone on long enough and that it is time to end this litigation. After three years of litigation, it is time to focus on more pressing issues. The nation is under attack and may soon be involved in a major war. In my opinion, this lawsuit should never have occurred in the first place. It was orchestrated by Microsoft's competitors like Sun Microsystems, Oracle, AOL, IBM, and others. I have not been a shareholder for almost a year but I am still very concerned about what I feel is gross miscarriage of justice in this case.

Microsoft should be rewarded for all the technological and economic advances their products allowed in the last decade. Instead their persecution, instigated by their competitors persists. I hoped the Appeals Court Judges would vacate Judge Jackson's findings. The Oral arguments certainly indicated this might happen, considering their horror upon discovering Judge Jackson's judicial misconduct, and the way they mocked the government's case. Even though their final decision admitted **that "All indications are that the District Judge violated each of these ethical precepts. The violations were deliberate, repeated, egregious, and flagrant." Section 455(a) of the Judicial Code requires judges to recuse them-selves when their "impartiality might reasonably be questioned."** The Appeals Court basically did nothing to remedy Jackson's inexcusable conduct beyond giving him a verbal tongue lashing, and they failed to have Jackson recused retroactively from the first time there was evidence of judicial misconduct.

Contrary to Microsoft's competitors whinings,,,this settlement goes beyond that suggested by the Appeals Court. The AC court threw out all of Jackson's remedies which would have broken up the company. They rejected the remedies not only because Jackson erred by not allowing an evidentiary hearing on remedies; but because those remedies no longer applied to the violations they found; which were much less severe than those found by Jackson. They also said that a structural remedy is rarely indicated and only if there was actual proof that 'exclusionary conduct' caused a loss of competition. In other words, there was no evidence to show that Netscape and Java would what they found to be in violation.

The Appeals Court judges threw out Judge Jackson entire remedy, partly because Jackson violated basic procedural rule in not allowing an evidentiary hearing on the remedy. In their words; **"It is a cardinal principle of our system of justice that factual disputes must be heard in open court and resolved through trial-like evidentiary proceedings. Any other course would be contrary "to the spirit which imbues our judicial tribunals prohibiting decision without hearing."**

Yet the Appeals Court ignored their own advice, and failed to hold an evidentiary hearing to determine when these 'egregious ethical violations' occurred. This allowed them to arbitrarily select a date, which conveniently was after Jackson issued his Findings of Fact and Conclusions of Law, even though evidence was presented that revealed the violations occurred before the Findings of Fact were issued.. The entire decision should at least have been vacated and the case remanded to a different judge or the case should have been thrown out in toto.

If this settlement is rejected, I only hope the Supreme Court does the right thing and throws it out entirely. **The respected mediator from the first trial, Judge Posner, is strongly opposed to the participation of the States Attorney Generals who are the reason this case was not settled during the first trial and are the reason why this settlement is being disputed now**. Posner has recommended that future antitrust cases brought by the Federal

government not allow the States Attorney Generals to participate. Unfortunately, he acknowledged that any change to the laws would occur too late to help this case be resolved.

Further, Posner acknowledges "A complication is that it is difficult to find truly neutral competent experts to advise the lawyers judges and enforcement agencies on technical questions in the new economy. There aren't that many competent experts, and almost all of them are employed by or have financial pies to firms involved in or potentially affected by antitrust litigation in this sector. It is difficult to find a consultant in the new economy who is both competent and disinterested, or "find neutral experts they could help the judge administer a consent decree."

"The new economy presents unusually difficult questions of fact, such as where a plaintiff complains that the defendant has changed the interface to make it more difficult for the plaintiffs product to work with the network, or a defendant contends that it disclosing a protocol would allow its competitors by reverse engineering to copy its trade secret, that cannot be protected by copyright or patent law . Both questions are very technical and difficult." "Antitrust in the New Economy. Antitrust Law Journal, 2001, 68, 920-940

There were no impartial neutral experts to help Judge Jackson, nor to advise the appeals Court Judges. Unfortunately, the Appeals Court Judges relied on the expertise of antitrust experts who they thought were impartial. but were actually hired by Microsoft's competitors. . Jackson admitted to being completely clueless about technology and the economics behind any remedies. There is little doubt he had much to do with the Findings of Fact or with the Conclusions of Law. Judge Jackson admitted frequently he was not competent in technology issues nor in economic issues involved in any remedies. In other words, Jackson was 'technologically and economically, challenged. He admitted that his secretaries would explain certain issues to him. Jackson just rubber stamped the remedy submitted by the Government, who consulted heavily with Microsoft's competitors. The government in turn accepted what Microsoft's competitors gave them.. they in turn got ProComp and SIIAA and CIIAA to do their work..

Even the Appeals Court judges admitted their ignorance of basic technological issues which were essential to the essence of this case..
"THE COURT: I mean I have to say that I have only done downloading of these things with the help of much more skilled people. So I took seriously the proposition that that was a big barrier. But 60 million people just downloaded it? The Appeals Court judges in Microsoft's appeal were astonished to learn that 160 million copies of Netscape browsers were distributed overall, and that their user base doubled to 33 million..... in 1998.....when Microsoft's competitors were accusing Microsoft of foreclosing competion.

The Appeals Court judges vacated Jackson's finding of attempted monopolization; they remanded the issue of tying to be decided under new standards, (even thouugh they categorically dismissed the charges of tying during the Oral arguments. (They indicated they were told (by Microsoft's competitors, no doubt) that they used the wrong standards. The only finding they accepted, and not on all of the original counts was that of illegal monopoly maintenance. Curiously, this theory of monopoly maintenance was created by Susan Creighton in the original White Paper about Netscape in 1997? Susan Creighton has been a diehard foe and 'card-carrying anti-Microsoft agitator' of Microsoft from the early '90's. More curiously, Susan Creighton is now the deputy director for the FTC. I hope she has recused herself from any involvement in this case.

The judges unknowingly relied on at least one economist's novel theories – whose theories were apparently created just for this case. Dennis Carlton was an original participant in Project Sherman. **"The Truth, The Whole Truth, and Nothing But The Truth" http://www.wired.com/wired/archive/8.11/microsoft.html**

Mike Morris was counsel for Sun Microsystems.. "Morris had been in contact with Joel Klein (in 1998) as part of a three-way effort to nudge the government toward a case against Microsoft" "for the past nine months." Wired 11/2000 Page 280. The other two parties were Netscape's Roberta Katz and Sabre's counsel, Andy Steinberg. Together they had founded ProComp. "Now Morris was plotting a solo mission: to put together a sort of private blue-ribbon commission of nationally renowned antitrust lawyers and economists, have them draw up an outline of the kind of Sherman Act case that would make sense for the DOJ to file, including a discussion of possible remedies, and then present the whole thing to Klein and his people. "According to the article, Joel Klein thought this would be useful. From Wired 11/2000 Page 280.

"The political sensitivity of Project Sherman was, needless to say, extremely high, for here was one of Microsoft's most ardent competitors bankrolling a costly endeavor to influence the DOJ - an endeavor undertaken with the department's encouragement." "So began a project that would span three months and consume $3 million of Sun's money: Project Sherman." "Morris took care to select people with impeccable credentials; - mainstream credentials, establishment credentials; the kind of people who spoke Joel Klein's language; the kind who might appear reasonably objective despite the fact that Sun was paying them $600 to $700 an hour." (From Wired Magazine, 11/2000, p 280)

"The "superstar" cast included economists from the firm of Lexecon; an attorney from Arnold & Porter: a Stanford economist and a former FTC counsel who handles Sun's antitrust work in Washington. " Members of Project Sherman met every two weeks for three months and then Morris got Gary Reback to assemble industry figures for a hush hush meeting, not knowing they had been paid by Sun. (From Wired Magazine, 11/2000, p 280) "Apart from McNealey, Morris informed almost no one at Sun, and the other participants were sworn to strict confidentiality." (page 280, Wired November 2000).

According to Heilemann, Reback and Creighton lobbied the FTC, the Senate Judiciary Committee, the European Commission, other Attorney Generals and anyone who would listen. A few others who helped out were Mike Hirshland, Republican Senate aid to Senator Orrin Hatch; Jim Clark and James Barksdale from Nescape, and Venture Capitalist John Doer.

"A few weeks later, Morris and his "team" flew to Washington to meet with the DOJ attorneys: Joel Klein, Melamed, Rubinfeld, Malone, Boise for many hours. "Morris's team "proceeded to outline the case they believed the DOJ should file." The charges were straight from the Netscape White Paper written by Susan Creighton "illegal monopoly maintenance and monopoly extension; a violation of Section 2 of the Sherman Act" They addressed the question of so called "harm to consumers;" the so called "damage to innovation" and "then the talk turned to remedies" and a range of conduct remedies" was presented as well as the "case for a structural remedy" (From Pages 282-283 of Wired Magazine, November 2000)

"In 1975 Microsoft had 3 employees and revenues of $16,000. Over the next 25 years they grew to 36,000 employees and revenues of $20 billion by obsessively figuring out what computer users needed and delivering it to them." "Over the years Gates and his colleagues made a lot of people mad, especially their competitors. Some of those competitors delivered a 222-page white paper in 1996 to Joel Klein, head of the Justice Department's antitrust division, and urged him to do to Microsoft in court what they couldn't do in the marketplace. **(Susan Creighton wrote that White Paper).**

Another peculiarity of this case is the presence of U.C. Berkeley Haas Business School Professor Michael L. Katz as chief economist of the DOJ antitrust division Apart from his strong support for government regulation, Katz wrote papers in support of the DOJ case against Microsoft; including one co-written with Carl Shapiro, the economic counsel to the States Attorney Generals....hmmmm...

Curiously, the Department of Justice worked closely with the competitors like Sun Microsystems for four years, often showing sentences or paragraphs in drafts of the department's plans and soliciting their approval. The politics of the case is a far cry from th Platonic ideal of rigorous economists devising the best possible antitrust rules and wise, disinterested judges carefully weighing th evidence." Microsoft's competitors have used the Department of Justice to try to take not just their money but their intellectual pr well. From "The Theft of Microsoft" by David Boaz. http://www.cato.org/dailys/07-27-00.html

I cannot imagine that Project Sherman was a legal undertaking, and wonder if the Appeals Court judges were aware of Joel Kleins meeting with reporter John Heileman. I wonder if the DOJ would have brought the case if it was publicly acknowledged at the time that they were listening to testimony from hired experts paid handsomely by Microsoft's .

During these difficult times, it is vital to do all we can to boost our economy. Restricting Microsoft will not accomplish this. This country is at war with a world wide network of Islamic extremists intent on destroying us. The Department of Justice needs to focus on "fixing" the FBI and improving the security of our nation and protecting American citizens against more terrorist attacks. Has this short passage of time since September 11 dulled memories

so quickly that we are back to the old games of using lawyers and politicians and the Department of Justice to squash competitors? Are things really back to normal? I don't think so...until the next terrorist attack...

Antitrust laws are not meant to protect competitors against their inability to compete in the marketplace due to their own incompetence...Look who is suing? AOL, Sun Microsystems, Oracle, IBM are multibillion corporations... not mom and pop outfits threatened by a bully...The antitrust laws were meant to protect consumers and to allow fair competition. Consumers are not complaining. However antitrust laws are now being used to protect competitors, and to make trial lawyers even richer,,,at the expense of consumers and the economy. How many companies have been forced into bankruptcy now by trial lawyers over asbestos? 20? 30? 50?

AOL, Time Warner, IBM, Sun Microsystems, Oracle, etc have contributed heavily to politicians for years...long before Microsoft was forced to play this game, as a result of their persistent efforts to prosecute and persecute Microsoft.

Should the DOJ continue to 'work' on behalf of Attorney Generals who are receiving large contributions and specific instructions from Microsoft's competitors via ProComp and other such organizations? After all, it was Sun Microsystems' who paid antitrust experts like Dennis Carlton to 'produce" antitrust charges which would appear credible to the DOJ. Reputable antitrust experts like Carlson produced novel antitrust theories of harm from incomplete exclusionary conduct. Almost all of the violations upheld by the Appeals Court were based on Carlton's 'novel' theories. Others were based on 'novel' theories developed by Susan Creighton, an ardent Microsoft foe.

I would think that the Enron scandal would make politicians and regulators more wary of the dangers involved from large contributors... I was surprised to learn the extent of Enron's contributions. They gave $50,000 to Paul Krugman, from the New York Times, who writes about economic matters, and not too surprisingly, Krugman apparently wrote positive articles in the past about Enron....

It was a complaint from Sun Microsystems that lead the European Union to launch an antitrust case against Microsoft by the EU. There is something about certain American companies that run to other countries to crush their competition ..if they can't get the DOJ or FTC to do it... It is telling that Sun Microsystems has 200 lawyers in their legal department, more than many large firms, even in Washington. I think their shareholders might prefer they spent more on improving their products and competing...as their stock continues to decline.

Microsoft was consistently been rated one of the top corporations to work for and one of the most admired companies by Fortune until the trial lawyers and AG and MSFT's competitors started their hatchet jobs and made Microsoft into an 'unsympathetic target." http://www.techcentralstation.com/1051/techwrapper.jsp?PID=1051-250&CID=1051-012901A

Microsoft's competitors lobbied politicians for years before Microsoft was finally forced to join their game and forced to pay this " protection money." " For about 20 years Gates and his colleagues just sat out there in "the other Washington," creating and selling. As the company got bigger, Washington, D.C., politicians and journalists began sneering at Microsoft's political innocence. ***A congressional aide told the press, "They don't want to play the D.C. game, that's clear, and they've gotten away with it so far. The problem is, in the long run they won't be able to." Politicians told Bill Gates, "Nice little company ya got there. Shame if anything happened to it."*** And Microsoft got the message: If you want to produce something in America, you'd better play the game. In 1995, after repeated assaults by the Federal Trade Commission and the Justice Department, Microsoft broke down and started playing the Washington game. It hired lobbyists and Washington PR firms. Its executives made political contributions. And every other high-tech company is getting the message, too, which is great news for lobbyists and fundraisers." (but not for consumers or innovators or successful companies..) From "The Theft of Microsoft" by David Boaz. http://www.cato.org/dailys/07-27-00.html

"What lesson should they draw? The antitrust laws are fatally flawed. When our antitrust laws are used by competitors to harm successful companies, when our most innovative companies are under assault from the federal government, when lawyers and politicians decide to restructure the software, credit-card and airline industries, it's time to repeal the antitrust laws and let firms compete in a free marketplace. "

Microsoft's competitors and these phony front groups are using their influence over the media, and their power from contributions to politicians to give the appearance that they are concerned with consumers, when they are only advancing their own agenda, which is harmful to most of us. Microsoft's competitors claim to have the interest of consumers at heart, when in reality their own incompetence lead to their loss of market share. AOL 5 was such a terrible product that even computer experts could not deal with the changes it made to the computer. It changed your default settings and took over. Mossberg from the Wall Street Journal, who has never been a fan of Microsoft, acknowledged this at the time and there were lawsuits over this which somehow failed to make the news. . Anyone who has ever used AOL knows about their inferior products and their poor customer service.

Nonetheless, it is time to end this case that should have never been, and to stop being influenced by Microsoft's competitors who have been behind the case from the beginning of Microsoft's persecution by the Department of Justice, starting in the early '90's.

This settlement is the perfect means to end this dispute. Microsoft will remain together and continue designing and marketing their innovative software, while fostering competition and making it easier for other companies to compete. Microsoft has pledged to share more information about Windows operating system products and has agreed to be monitored for compliance.

I sincerely hope the Department of Justice accepts this settlement and puts an end to this mess and turns their attention to real threats to the Nation- the terrorists who want to destroy the West. Caving into Microsoft's major competitors who are behind the Attorney Generals hurt consumers and the economy further. Let them innovate like Microsoft does, rather than litigate.

Thank you for your attention.

Sincerely,

Helen B. Gamsey
757-440-5910

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Helen Gamsey